Supreme Court U.S.
FILED

051438 FEB 18 2006

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

PETER VALLECILLO,
Petitioner,

VS.

UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

PETER VALLECILLO
9506 Wahada
San Antonio, Texas 78217
Telephone No: (210) 824-6885
Facsimile: (210) 824-0384

PETITIONER, *PROSE*

QUESTIONS PRESENTED

The Fifth Circuit Court of Appeals affirmed the United States Department of Housing & Urban Development's ("HUD") Motion for Summary Judgment.

Three questions are presented:

1. Whether the Fifth Circuit Court of Appeals held the Petitioner to higher standards of burden to prove his claims more so than what established laws and existing policy require.

2. Whether the Fifth Circuit Court of Appeals properly applied Federal Civil Rule of Procedure No. 56 in affirming the Summary Judgment.

3. Whether the Petitioner is being denied his constitutional right to a trial by jury under U.S. Constitution Amendment VII as established by the Civil Rights Act of 1991 for Title VII discrimination cases.

LIST OF PARTIES

In the Fifth Circuit Court of Appeals:

Appellant - Peter Vallecillo

Appellee - United States Department of Housing and Urban Development

In the United States Supreme Court:

Petitioner - Peter Vallecillo

Respondent - United States Department of Housing and Urban Development

CORPORATE DISCLOSURE STATEMENT

Neither Petitioner nor Respondent own 10% or more of any non-governmental corporation. Additionally, nor is any non-governmental corporation involved in this appeal.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	*i*
LIST OF PARTIES	*ii*
CORPORATE DISCLOSURE STATEMENT	*ii*
TABLE OF CONTENTS	*iii & iv*
TABLE OF CITED AUTHORITIES	*v & vi*
TABLE OF APPENDICES	*vii*
OPINION BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR ALLOWANCE OF THE WRIT	17

Page

I. REVIEW IS WARRANTED TO DETERMINE WHETHER THE FIFTH CIRCUIT COURT OF APPEALS APPLIED HIGHER STANDARDS FOR PETITIONER TO PROVE HIS CLAIMS..... 7

II. REVIEW IS WARRANTED TO DETERMINE WHETHER THE FIFTH CIRCUIT COURT OF APPEALS APPROPRIATELY EVALUATED EVIDENCE IN AFFIRMING SUMMARY JUDGMENT IN ACCORDANCE WITH FEDERAL RULE OF CIVIL PROCEDURE NO. 56..... 14

III. REVIEW IS WARRANTED TO DETERMINE WHETHER THE FIFTH CIRCUIT COURT OF APPEALS IN AFFIRMING SUMMARY JUDGMENT DENIED

PETITIONER HIS RIGHT TO A JURY TRIAL 17

CONCLUSION..... 18

TABLE OF CITED AUTHORITIES

Page

Cases:

EEOC v. Ohio Edison Co.,
7 F.3d 541, 543 (6th Cir. 1993)..... 13

Harris v. Forklift Systems, Inc.,
510 U.S. at 17, 21, 23 (1993)..... 10

Mattei v. Mattei,
126 F.3D 794, 806 (6th Cir. 1997)..... 14

Morris v. Oldham County Fiscal Court,
201 F.3d 784, 792 (6th Cir. 2000) 13

Nash v. Electrospace Sys., Inc.,
9 F.3d 401, 404 (5th Cir. 1993)..... 9

Payne v. McLemore's Wholesale & Retail Stores,
654 F.2d 1130 (5th Cir. 1981) 136 L. Ed. 2d 607, 117 S. Ct.
682 (1997)..... 13

Sheila White v. Burlington Northern & Santa Fe Railway
Co., 364 F.3d 789 (5th Cir. 2004)..... 14

Shepherd v. Comptroller of Pub. Accounts,
168 F.3d 871 (5th Cir. 1999)..... 8

Watts v. Kroger Co.,
170 F.3d 505 (5th Cir. 1999)..... 8

Antionette Pheil v. Intecom Telecommunications, et al.
90 F. Supp. 2d 742; 2000 U.S. Dist. LEXIS 363..... 11

Faragher v. City of Boca Raton,
118 S. Ct. 2275, 141 L. Ed. 2d 662, 1998 U.S. Lexis 4216,
*25 1998 WL 336332, *9 (1998)..... 12

Weller v. Citation Oil & Gas Corp.,
84 F.3d 191 (5th Cir. 1996), cert. denied, ... 11

Statutes

U.S. Constitution Amendment VII..... 17

Section 102(c) of the Civil Rights Act of 1991..... 17

Fed. R. Civil Procedure 56..... 15

TABLE OF APPENDICES

Page

Appendix A- Opinion Of The United States Court Of Appeals For The Fifth Circuit Dated And Decided November 22, 2005..... 1a

Appendix B- Opinion Of The United States District Court For The Western District Of Texas, San Antonio Division Dated January 21, 2005 And Filed January 27, 2005... 36a

OPINION BELOW

The initial opinion of the United States Court of Appeals for the Fifth Circuit is not published. The Fifth Circuit affirmed the January 21, 2005 decision of the United States District Court for the Western District of Texas, San Antonio Division. See Appendices A-B.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254 (1). The Fifth Circuit's opinion was rendered on November 22. 2005. See Appendix A.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Civil Rights Act of 1991, Section 102(c).

If a complaining party seeks compensatory or punitive damages under this section any party may demand a trial by jury.

STATEMENT OF THE CASE

The Petitioner initially made protected disclosures of the discriminatory disparity in the hiring of Mexican-Americans during the first week of indoctrination into the Community Builder (hereafter, CBer) program to Assistant Secretary of Housing and Urban Development, Saul Ramirez. The Petitioner arrived at HUD's San Antonio office on or about September 28, 1998 and met with his supervisor, Ms. Leon and disclosed his belief that Mexican-Americans may have been discriminated in the Respondent's process of hiring CBers and questioned the distribution of salaries. Ms. Leon directed the Petitioner to contact HUD Headquarters to address his concerns.

On or about October 10, 1998, the Petitioner departed for training at Harvard University. While at Harvard, the Petitioner and other Mexican-American CBers complained about the lack of Hispanics selected to participate in the CBer program and how HUD ignored minorities in the curriculum presented in the class sessions. The Petitioner and other Mexican-American CBers intended to walk out of classes and eventually met with Harvard's CBer Program Coordinator and reached a compromise.

The Petitioner returned to HUD's San Antonio office, on or about October 29, 1998. On or about November 3, 1998 the Petitioner was summoned by Ms. Leon to her office. Ms. Leon confronted the Petitioner with allegations made by Martha Collins, Administrative Director, accusing him of displaying unprofessional conduct towards her. The Petitioner requested the presence of Ms. Collins and CBer Nicholas Ramon, who would present evidence contradicting the allegations. Ms. Leon assured the Petitioner he had nothing to worry about and it was not necessary to bring anyone else into the discussion, and that the incident would

not be held against him. On the same day, Mr. Ramon informed the Petitioner that he was accused of sexually harassing Debra Dunn, Ms. Collins assistant.

On or about November 12, 1998, the Petitioner and CBer Nicolas Ramon, met with Diana Armstrong, HUD's San Antonio Housing Director, and disclosed concerns community activists had regarding a HUD funded housing project (known as the Mirasol housing project). The specific concerns included homes being built over contaminated soil, density, and construction issues. Ms. Collins advised the Petitioner and Mr. Ramon that she would look into the matter.

On or about November 17, 1998 Ms. Leon summoned the Petitioner to her office and confronted him with allegations made by Ms. Armstrong accusing him of displaying unprofessional conduct towards her. The Petitioner requested the presence of Ms. Armstrong and Mr. Ramon, who would present evidence contradicting the allegations. Again, Ms. Leon assured the Petitioner he had nothing to worry about and that the incident would not be used against him.

On or about December 18, 1998, the Petitioner sent HUD Deputy Secretary Saul Ramirez a letter disclosing the Respondent's denial to negotiate his salary and questioning the process of salary distributions in the CBer program. The Petitioner received a response to his letter of December 18, 1998 sent to Saul Ramirez from Ms. Carol Johnson, Office of Personnel Management. Ms. Johnson's letter dated January 14, 1999 informed the Petitioner that the staff from the office of Human Resources had evaluated his original

application for employment for the CBer Fellowship Program along with guidelines and other relevant information used to evaluate candidates for the CBer Fellowship. Ms. Johnson's letter pointed out that, "It has been determined, based on the information contained in your resume and other supporting documents, that your application was properly evaluated at the GS-13 level for a Community Builder Fellow position. Under OPM guidelines, a combination of education, and qualifying experience was used to determine your qualifications at the GS-13 level".

The Petitioner responded to Ms. Johnson's letter and on January 20, 1999 he requested she forward to him the OPM qualifications guidelines and criteria of "other relevant information" which was used in evaluating candidates for the CBer fellowship explaining the selection of CBers.

On or about January 4, 1999, the Petitioner sent an e-mail to Ricardo H. Perez, Assistant to Deputy Secretary Saul Ramirez, disclosing that city assignments and salaries given to CBers are suspect. On or about January 4, 1999, the Petitioner sent an e-mail to Mr. Perez disclosing the fact that the Respondent was denying [him] an opportunity to negotiate his salary and his belief that the questioning of his salary was negatively perceived.

On or about January 9, 1999 the Petitioner met with Congressman Charlie Gonzales and disclosed his beliefs regarding the questionable discriminatory hiring practices by the Appellate; disparities in Mexican-American CBers' salaries; and disclosed the two incidents (including Mirasol Housing Project). On or about January 12, 1999, the Petitioner sent an e-mail to Mr. Perez disclosing his feelings of being labeled a "Rebel", unfair treatment of Latinos in the